

REMARKS

In the Final Office Action, Claims 51-56 and 58-67 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by Everhart et al. (U.S. Pat. No. 6,221,579) (Everhart '579); Claims 51-56 and 58-67 were also rejected under 35 U.S.C. §102(e) as allegedly anticipated by Everhart et al. (U.S. Pat. No. 6,180,288) (Everhart '288); Claims 51-56 and 58-67 were also rejected under 35 U.S.C. §102(e) as allegedly anticipated by WO 01/44813 (WO '813); Claims 51-56 and 58-67 were further rejected under 35 U.S.C. §102(b) as allegedly anticipated by Everhart et al. (U.S. Patent No. 6,060,256) (Everhart '256); Claims 51-56 and 58-67 were also rejected under 35 U.S.C. §102(b) as allegedly anticipated by Everhart et al. (U.S. Pat. No. 6,048,623) (Everhart '623); Claims 51-56 and 58-67 were also rejected under 35 U.S.C. §102(b) as allegedly anticipated by Everhart et al. (U.S. Pat. No. 6,020,647) (Everhart '647); Claims 51-56 and 58-67 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Everhart et al. (U.S. Pat. No. 5,922,550) (Everhart '550); and Claim 57 was rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Everhart '579, Everhart '288, WO '813, Everhart '256, Everhart '623, Everhart '647 or Everhart '550 in view of Moors (U.S. Patent No. 3,598,180).

In this Amendment, Applicants have added Claims 68 and 69. Thus, upon entry of this Amendment, Claims 51-69 will be pending. Of these claims, Claims 51 and 68 are independent claims.

Applicants respectfully submit that Claims 51-56 and 58-67 are not anticipated by any of the cited references under 35 U.S.C. §102(e) or 35 U.S.C. §102(b). Claim 51, for instance, recites a diffraction-based assay device for detecting the presence of an analyte, the device comprising a substrate that comprises a polymer film and an optional metal coating, wherein a

binder is present on the substrate in a pattern; a fluidic guide that is in direct communication with the substrate, wherein the fluidic guide includes at least one channel through which a fluid test sample is capable of flowing via capillary action; a wicking agent that is capable of receiving the fluid test sample from the fluidic guide and thereafter facilitating contact of the fluid sample with the binder on the substrate; and an electromagnetic radiation source that is configured to direct electromagnetic radiation to the substrate for generating a diffraction pattern. Applicants respectfully submit that none of the cited references teach or disclose each and every element required by Claim 51.

Although the Final Office Action states that each of the cited references teaches a channel that reads on the fluidic guide recited by Claim 51, Applicants respectfully disagree. As discussed below, the cited references fail to teach or disclose at least this fluidic guide, which is clearly described, for instance, at page 15, line 14 continuing to page 19, line 25 of the Applicants' specification.

More specifically, Everhart '579 is directed to diffraction enhancing element particles. Everhart '579 at least does not teach a fluidic guide that is in direct communication with a substrate wherein the fluidic guide includes at least one channel through which a fluid test sample is capable of flowing via capillary action.

Everhart '288 is generally directed to responsive gels on a patterned self-assembling monolayer. Everhart '288 at least does not teach a fluidic guide that is in direct communication with a substrate wherein the fluidic guide includes at least one channel through which a fluid test sample is capable of flowing via capillary action.

WO '813 is generally directed to the use of a wicking agent to eliminate washing steps. WO '813 at least does not teach a fluidic guide that is in direct communication with a substrate

wherein the fluidic guide includes at least one channel through which a fluid test sample is capable of flowing via capillary action.

Everhart '256 is generally directed to diffraction based detectors that do not require self-assembled monolayers. Everhart '256 at least does not teach a fluidic guide that is in direct communication with a substrate wherein the fluidic guide includes at least one channel through which a fluid test sample is capable of flowing via capillary action.

Everhart '623 is generally directed to gold-coated printed films that produce diffraction patterns. Everhart '623 at least does not teach a fluidic guide that is in direct communication with a substrate wherein the fluidic guide includes at least one channel through which a fluid test sample is capable of flowing via capillary action.

Everhart '647 is generally directed to microcontact printing of self-assembled monolayers. Everhart '647 at least does not teach a fluidic guide that is in direct communication with a substrate wherein the fluidic guide includes at least one channel through which a fluid test sample is capable of flowing via capillary action.

Everhart '550 is generally directed to detecting an analyte via the formation of a diffraction image. Everhart '550 at least does not teach a fluidic guide that is in direct communication with a substrate wherein the fluidic guide includes at least one channel through which a fluid test sample is capable of flowing via capillary action.

Applicants respectfully submit that none of the cited references alone anticipate Claim 51. Moreover, Applicants respectfully submit that no combination of the cited references teach each and every element of Claim 51. Accordingly, Applicants respectfully request that the rejection to Claim 51 be withdrawn and Claim 51 and its dependent Claims 52-67 be allowed.

Applicants respectfully submit that new Claims 68 and 69 are also not anticipated by any one of the cited references and are patentable over the cited references, alone or in combination. Thus, Applicants also respectfully request allowance of Claims 68 and 69.

The Examiner is encouraged to contact the undersigned at his convenience should he have any questions regarding the present Amendment.

Please charge any additional fees or credit any overpayment required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,
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